

§ 785.1

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101–5104.

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§ 785.1 General.

(a) States meeting conditions specified in this part may have their mediation programs certified by the Farm Service Agency (FSA) and receive Federal grant funds for the operation and administration of agricultural mediation programs.

(b) USDA agencies participate in mediations pursuant to agency rules governing their informal appeals processes. Where mediation of an agency decision by a certified State mediation program is available to participants in an agency program as part of the agency's informal appeal process, the agency will offer a participant receiving notice of an agency decision the opportunity to mediate the decision under the State's certified mediation program, in accordance with the agency's informal appeals regulations.

(c) USDA agencies making mediation available as part of the agency informal appeals process may execute memoranda of understanding with a certified mediation program concerning procedures and policies for mediations during agency informal appeals that are not inconsistent with this part or other applicable regulations. Each such memorandum of understanding will be deemed part of the grant agreement governing the operation and administration of a State certified mediation program receiving Federal grant funds under this part.

(d) A mediator in a program certified under this part has no authority to make decisions that are binding on parties to a dispute.

(e) No person may be compelled to participate in mediation provided through a mediation program certified under this part. This provision shall not affect a State law requiring mediation before foreclosure on agricultural land or property.

§ 785.2 Definitions.

Administrator means the Administrator, FSA, or authorized designee.

Certified State mediation program means a program providing mediation services that has been certified in accordance with § 785.3.

Confidential mediation means a mediation process in which the mediator will not disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or § 785.9.

Covered persons means producers, their creditors (as applicable), and other persons directly affected by actions of the USDA involving one or more of the following issues:

- (1) Wetlands determinations;
- (2) Compliance with farm programs, including conservation programs;
- (3) Agricultural loans (regardless of whether the loans are made or guaranteed by the USDA or are made by a third party);
- (4) Rural water loan programs;
- (5) Grazing on National Forest System lands;
- (6) Pesticides; or
- (7) Such other issues as the Secretary may consider appropriate.

Fiscal year means the period of time beginning October 1 of one year and ending September 30 of the next year and designated by the year in which it ends.

FSA means the Farm Service Agency of the U.S. Department of Agriculture, or a successor agency.

Mediation services means all activities relating to the intake and scheduling of mediations; the provision of background and selected information regarding the mediation process; financial advisory and counseling services (as reasonable and necessary to prepare parties for mediation) performed by a person other than a State mediation program mediator; and mediation sessions in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but has no authoritative decision making power.

Mediator means a neutral individual who functions specifically to aid the